

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 383 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GAMANLAL CHIMANLAL CHAMPANERIA

Versus

JAMIYATRAM NATHUBHAI TOLAT

Appearance:

MR RN SHAH for Petitioners

MR BC DAVE for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/02/2000

ORAL JUDGEMENT

The petitioners-original plaintiffs, by filing this Civil Revision Application under Section 29(2) of the Bombay, Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'the Rent Act'), have challenged the legality and validity of the judgment and decree dated 30.7.1983 passed by the learned Extra Asstt.Judge, Surat in Regular Civil Appeal No.82 of 1982 by which the

learned Extra Asstt.Judge, Surat allowed the appeal by setting aside the decree for possession passed by the learned trial Judge for recovery of possession of the suit premises. Brief facts giving rise to filing of this Revision Application are as under:

2. Petitioners are the owners of property bearing Nondh No.1489 of Ward No.11 situated at Nanavat, Kinari bazar, Surat which was rented out to the opponent at a monthly rent of Rs.12/-. As the opponent was in arrears of rent from 1.10.1975, notice was served on him. In the notice, the petitioners had alleged that the opponent had acquired vacant possession of suitable residence after coming into operation of the Rent Act. It was also alleged that the petitioners required the suit premises for their bonafide and personal use and occupation. The opponent did not comply with the requirement of the notice. Hence the petitioners filed Rent Suit No.98/78 in the Court of Small Causes Court, Surat. The suit was resisted by the opponent by filing written statement at Exh.11, inter-alia, contending that the standard rent of the suit premises was Rs.10.25 paise per month. That the opponent was ready and willing to pay the amount of rent and in fact had sent the arrears of rent after receiving notice to the petitioners which was accepted by them. It was denied that the petitioners required the suit premises for personal and bonafide use. It was further averred that the suit premises were not sufficient to accommodate all the family members which were 15 in number. The opponent had purchased one property in Ward No.11, Nondh No.1179 known as Daria mahal. It was further averred that the suit premises were not sufficient to accommodate all the members of his family and so he purchased the aforesaid building and the said building was not sufficient to accommodate all his family members. The opponent averred that he has got three married sons and they have in all eight children and it was not possible to accommodate all of them in the newly acquired premises. On the aforesaid pleadings of the parties, learned Judge, Small Causes Court framed issues at Exh.13. The petitioners, in support of their case, examined petitioner No.1-Gamanlal Chimanlal at Exh.27 and Devdutt Chhotubhai at Exh.45. The opponent examined himself at Exh.47. The parties also led documentary evidence such as copy of the sale deed of the property purchased by the opponent-tenant, copies of extracts property register of city survey office etc.

3. The learned Judge, Small Causes Court, Surat, on appreciation of oral and documentary evidence, held that the plaintiffs had failed to prove that they require the

suit premises reasonably and bonafide for their occupation. It was held that the opponent had, after coming into operation of the Rent Act, had acquired vacant possession of suitable residence. The Small Causes Court fixed the standard rent of the suit premises at Rs.10.25 paise per month. On the basis of the conclusion arrived at by the learned Judge of Small Causes Court that the opponent had acquired suitable residence after coming into force of the Rent Act, decree for possession came to be passed against the opponent which was challenged in the District Court by filing Regular Civil Appeal No.82 of 1982. The said Appeal was heard by the learned Extra Asstt.Judge, Surat. The learned Extra Asstt.Judge, on going through oral as well as documentary evidence and after hearing the arguments of the learned counsel for the parties, held that the opponent had acquired suitable residence but it was not sufficient to accommodate all the 15 family members. On the basis of the above referred to conclusions, the learned Extra Asstt.Judge allowed the Appeal by setting aside the decree for possession passed against the opponent, given rise to filing of this Civil Revision Application by the petitioners.

4. Learned counsel for the petitioners Mr R N Shah has taken me to the entire evidence produced on record. It is submitted that admittedly it is proved by the petitioners that the defendant-tenant had acquired suitable residence which was sufficient for the family members of the tenant and, therefore, the lower Appellate Court had erred in not confirming the decree for possession passed by the trial court under Section 13(1)(1) of the Rent Act. Learned counsel for the petitioners further contended that in the newly acquired premises there were three rooms in which all the family members of the opponent can be accommodated and, therefore, the lower Appellate Court had erred in setting aside the decree for possession which was passed by the trial court. Learned counsel for the petitioners further submitted that the lower Appellate Court had erred in not properly appreciating the evidence adduced by the petitioners that the newly acquired premises were, in all respects, suitable residence to accommodate all family members. Therefore, this Civil Revision Application deserves to be allowed and the decree granted by the trial court be set aside.

5. Learned counsel for the opponent Mr B C Dave has vehemently submitted that in all there were 15 members in the opponent's family which could not be accommodated in the rented premises and, therefore, the opponent had

purchased a building bearing Nondh No.1179 known as Daria mahal. Learned counsel for the opponents further submitted that the married sons had shifted to newly acquired residence but the opponent-tenant is occupying the rented premises. As all the family members could not be accommodated in the newly acquired premises and, therefore, the newly acquired premises were not suitable residence for the opponent's family members. Learned counsel for the opponent has submitted that this being Civil Revision Application filed under Section 29(2) of the Rent Act, this Court cannot reappreciate the evidence and this Civil Revision Application deserves to be dismissed.

6. It is an admitted fact that there are in all 15 members in the family of the opponents. Three of the sons of the opponent are married and having 8 children. The married sons require a separate room and the children also require one room as they are grown up children. Looking to the size of the family of the opponent, in my opinion, the newly acquired premises was not suitable residence for all the family members. In fact, the opponent had purchased new building as he could not accommodate all his family members in the rented premises. In my opinion, the lower Appellate Court has rightly appreciated the evidence and had come to the conclusion that the newly acquired premises were not a suitable residence to accommodate all the family members of the opponents. I do not find any perversity or illegality in the conclusion arrived at by the lower Appellate Court.

7. In the case of Soni Jagjivan Narsi v. Manchhaben Odhavji, reported in (1975) 16 GLR 991, the learned Single Judge of this Court, while interpreting Section 13(1)(1) of the Rent Act with regard to suitable residence observed as under:

"A suitable residence within the meaning of section 13(1)(1) of the Bombay Rent Control Act means a residence which is really an alternative to the suit premise. A tenant having one set of rented premises takes a second set of premises on rent. The old premises from which he has shifted to his new premises continue to be occupied by his dependants. If the persons who continue to occupy the old premises are his dependants, it cannot be said that he has acquired vacant possession of a suitable residence because his eviction from his old premises will again drive his dependants from that place to his new

premises and will create difficulty of accommodating them. If the evidence shows that the new premises which a tenant has taken on rent are sufficient to accommodate him and all his dependants, then certainly he can be evicted under Sec. 13(1)(91) of the Act. But if the new premises are not sufficient for accommodating his large family and if he himself resides in his new premises and if his dependants continue to occupy or reside in his old premises, he cannot be evicted under section 13(1)(1) of the Bombay Rent Control Act because his new premises are not "suitable" for accommodating his entire family."

In view of the judicial pronouncement of the learned Single Judge in Soni Jagjivan's case (supra), in my view opinion, the acquisition of new premises by the opponents, because the rented premises was not sufficient to accommodate all the family members, cannot be called "suitable" residence so as to attract provisions of section 13(1)(1) of the Rent Act.

8. As a result of the foregoing discussion, I do not find any merit in this Civil Revision Application and it deserves to be rejected. The Civil Revision Application is accordingly rejected. Rule discharged. No order as to costs.

....
msp.